

1 Pamela M. Egan, WSBA No. 54736 (*pro hac vice*)  
2 POTOMAC LAW GROUP  
3 1905 7<sup>th</sup> Avenue W  
4 Seattle, Washington 98119  
5 Telephone: (415) 297-0132  
6 Facsimile: (202) 318-7707  
7 Email: pegan@potomacclaw.com  
8 *Attorneys for Mark D. Waldron, Chapter 11 Trustee*

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**UNITED STATES BANKRUPTCY COURT**  
**EASTERN DISTRICT OF WASHINGTON**

In re:

GIGA WATT, Inc., a Washington  
corporation,

Debtor.

Case No. 18-03197

The Honorable Frederick P. Corbit

**CHAPTER 11 TRUSTEE'S  
OBJECTION TO COMMITTEE'S  
MOTION TO FILE ADVERSARY  
PROCEEDING AGAINST  
DOUGLAS COUNTY PUD FOR THE  
BENEFIT OF THE BANKRUPTCY  
CASE**

**CHAPTER 11 TRUSTEE'S OBJECTION TO COMMITTEE'S MOTION TO  
SUE DOUGLAS COUNTY PUD**

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1 **TABLE OF AUTHORITIES**

2 **CASES**

3 *In re Consol. Nevada Corp.*, 2017 WL 6553394 (B.A.P. 9th Cir.  
4 Dec. 21, 2017).....2  
5 *Lopez v. Specialty Restaurants Corp. (In re Lopez)*, 283 B.R. 22 (9th Cir.  
6 BAP 2002) .....2

7 **STATUTES**

8 11 U.S.C. § 323.....1  
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1 Mark D. Waldron, in his official capacity as the Chapter 11 Trustee (the  
2 “**Trustee**”) hereby objects to the *Committee’s Motion for Authorization to File*  
3 *Adversary Proceeding Against Douglas County PUD for the Benefit of the*  
4 *Bankruptcy Estate*, filed on April 9, 2020 [ECF 533] (the “**Motion**”) by the  
5 Official Committee of Unsecured Creditors (the “**Committee**”). This Objection is  
6 supported by the Declaration of Mark D. Waldron, filed herewith, and the points  
7 and authorities set forth below. In support of the Objection, the Trustee  
8 respectfully avers:

## 9 I. INTRODUCTION

10 The Motion should be denied for at least three reasons. First, the Trustee is  
11 the representative of the bankruptcy estate. Second, the Committee has failed to  
12 explain why the Trustee should be stripped of that responsibility. Third, litigation  
13 of the type proposed by the Committee should not be commenced before  
14 confirmation of a plan.

## 15 II. POINTS AND AUTHORITIES

### 16 A. The Trustee Is the Estate’s Representative

17 “The trustee in a case under this title is the representative of the estate.” 11  
18 U.S.C. § 323. The Bankruptcy Appellate Panel has reiterated the central role of  
19 the trustee with respect to litigation:

20 [The trustee] has the “authority to act for the benefit of  
21 the estate and may sell the cause of action, prosecute it  
22 in nonbankrupt court, settle it, or abandon it to the  
debtor as of inconsequential value to the estate.” . . . It  
follows that a trustee may simply dismiss a claim if

1 doing so would further the estate's interests. The  
2 bankruptcy trustee must determine, in his sound business  
3 judgment, what disposition is in the best interests of the  
4 estate. . . . The trustee's authority is discretionary.

5 *In re Consol. Nevada Corp.*, 2017 WL 6553394, at \*5 (B.A.P. 9th Cir. Dec. 21,  
6 2017), *aff'd*, 778 F. App'x 432 (9th Cir. 2019) (quoting *Lopez v. Specialty*  
7 *Restaurants Corp. (In re Lopez)*, 283 B.R. 22, 32–33 (9th Cir. BAP 2002); other  
8 citations omitted). The BAP added, “Moreover, we are loathe to second-guess a  
9 trustee's business judgment.” *Consol. Nevada Corp.*, *supra* at \*6.

10 **B. The Committee Has Not Explained Why the Trustee Should be**  
11 **Stripped of His Responsibility to Represent the Estate**

12 Despite its own formidable rights of investigation, the Committee has not  
13 interviewed any of the relevant parties, including Lisa Parks of the Chelan  
14 Douglas Regional Port Authority, formerly known as the Port of Douglas County,  
15 Gary Ivory of the Public Utility District No. 1 of Douglas County, Washington or  
16 their attorneys, Bill Hames, Kathryn McKinley and Evan McCauley. In contrast,  
17 the Trustee has interviewed each of these parties. Furthermore, before the  
18 Committee filed the Motion, the Trustee agreed to confer with the Committee's  
19 special counsel regarding the claims alleged against the District. The Trustee also  
20 promised that if the special counsel raised a colorable theory, then the Trustee  
21 would conduct discovery. He also agreed to keep the Committee apprised of his  
22 analysis.

1 The Committee does not explain why these efforts are insufficient or  
2 unreasonable. Nor does the Committee justify its request to sue the District  
3 without the benefit of any investigation by the Committee.

4 **C. The Estate's Limited Resources Should Not be Expended on Pre-**  
5 **Confirmation Litigation That Is Unrelated to Disposition of the**  
6 **Debtor's Physical Assets**

7 Now is not the time to expend the estate's limited resources on litigation  
8 that is not directly tied to the Trustee's current efforts to monetize the Debtor's  
9 assets for the benefit of creditors. Currently, the Trustee is in the final stages of  
10 selling the Debtor's facility commonly known as the "TNT Facility," as a going  
11 concern). The next step will be to wind down the Debtor's facility in Moses Lake,  
12 Washington and finalize the Trustee's litigation analysis. At that point, the Trustee  
13 expects to submit a plan, providing for a litigation trust, on which the creditors can  
14 vote. If the plan is confirmed, appropriate litigation would be commenced post-  
confirmation. There is no reason to alter that timeline.

15 **III. CONCLUSION**

16 WHEREFORE, the Trustee respectfully requests that the Court deny the  
17 Motion in its entirety.

18 Dated: April 27, 2020

POTOMAC LAW GROUP

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20 By: /s/ Pamela M. Egan  
Pamela M. Egan (WSBA No. 54736)

21 *Attorneys for Mark D. Waldron, Chapter 11*  
22 *Trustee*